

County of Mercer

McDadeAdministrationBuilding, 640 South Broad Street, P.O. Box 8068,
Trenton, NJ 08650-0068

**REQUEST FOR PROPOSAL FOR
PHARMACEUTICAL BENEFITS MANAGEMENT FOR
THE OFFICE OF INSURANCE AND PROPERTY MANAGEMENT**



TO BE RECEIVED ON DECEMBER 23, 2014 AT 11:00 A.M.

RFP 2014-01

**COUNTY OF MERCER
NOTICE OF REQUEST FOR PROPOSAL
RFP #2014-01**

Exempt Services

The County of Mercer is soliciting proposals through a fair and open process in accordance with N.J.S.A. 19:44A-20.4 et seq.

MERCER COUNTY IS SOLICITING PROPOSALS FOR A PHARMACY BENEFITS MANAGER.

Mercer County requires submission by December 23, 2014 at 11:00 A.M. in the Office of Purchasing, 640 S. Broad Street, Room 321, Trenton, NJ 08650. Late submissions will not be accepted.

With the exception of the United States Postal Service, express mail shall be delivered to the Department of Purchasing, 640 S. Broad Street, Room 321, Trenton, New Jersey 08611.

Specifications and instructions may be obtained in the Department of Purchasing or on the County Website at: <http://nj.gov/counties/mercercounty/procurement/bidsopp.html>

It is the responsibility of prospective respondent's to check this website for any addenda issued prior to the proposal opening. Failure to do so could result in the rejection of your submission.

SCHEDULE:

RELEASE RFP:	December 2, 2014
QUESTIONS TO:	December 8, 2014 by 4:00 P.M. to mcovello@mercercounty.org
ISSUE ADDENDA:	December 11, 2014
OPEN PROPOSALS:	December 23, 2014 at 11:00 A.M.

Respondents shall comply with the requirements of P.L. 1975 C127. (N.J.S.A. 17:27 et seq.)

Marcella Covello, QPA
Purchasing Agent
County of Mercer
RFP2014-01

1. Introduction

The County of Mercer requires the services of a **Pharmacy Benefits Manager (PBM)** for processing and paying prescription drug claims for retail, mail order and specialty pharmacy services. The PBM shall develop and maintain the County's formulary, contract with licensed pharmacies, and negotiate discounts and rebates with drug manufacturers. The PBM will report directly to Ms. Megan Hughes, Risk Manager for the Insurance and Property Management Office. There is no broker of record. The contract shall be awarded for a period of one year with two one year options to extend the contract based upon the index rate.

There are various co-pay structures based upon the employee's union contract; however, the majority of the County employees pay \$4.00 for generic medications and \$12.00 for brand medications. Our current program consists of generic, brand and mail order, with no cost to the employee for mail order.

Respondents are required to request attachments and The Purchasing Department will provide a link to the worksheets. Contact 609 989 6710.

2. Administrative Conditions and Requirements

The following items express the administrative conditions and requirements of this RFP. Together with the other RFP sections, they will apply to the RFP process, the subsequent contract, and project production. Any proposed change, modification, or exception to these conditions and requirements may be the basis for the County of Mercer, hereinafter referred to as owners, to determine the proposal as non-responsive to the RFP and will be a factor in the determination of an award of a contract. The contents of the proposal of the successful Respondent, as accepted by the owner, will become part of any contract awarded as a result of this RFP.

2.1 Schedule

SCHEDULE:

RELEASE RFP:	December 2, 2014
QUESTIONS TO:	December 8, 2014 by 4:00 P.M. to mcovello@mercercounty.org
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2.2 Proposal Submission Information

One (1) Original clearly marked, five (5) copies and one (1) CD to The Department of Purchasing.

It is the respondent's responsibility that proposals are presented to the County at the time and at the place designated. Proposals may be hand delivered or mailed; however, the County disclaims any responsibility for regular or overnight mail. If the proposal is sent by express mail service, the designation must also appear on the outside of the express mail envelope. Proposals received after the designated time and date shall be returned unopened. Clearly mark the submittal package with the title of this RFP and the name of the responding firm. The original proposal shall be marked to distinguish it from the copies.

2.3 Using Department Information

Ms. Megan Hughes

Risk Manager

609 989 6655

2.4 County Representative for this Solicitation

Marcella Covello, Purchasing Agent at mcovello@mercercounty.org

609 989 6710

2.5 Interpretations and Addenda

Respondents are expected to examine the RFP with care and observe all its requirements. All questions about the meaning or intent of this RFP, all interpretations and clarifications considered necessary by the owner's representative in response to such comments and questions will be issued by formal written Addenda will be binding. Oral interpretations, statements or clarifications are without legal effect.

2.6 Quantities of Estimate

Wherever the estimated quantities of work to be done are shown in any section of this RFP, including the Proposal Cost Form, they are given for use in comparing proposals. The owner especially reserves the right (except as herein otherwise specifically limited) to increase or diminish the quantities as may be deemed reasonably necessary or desirable by the owner to complete the work detailed by the contract. Such increase or diminution shall in no way violate this contract, nor shall any such increase or diminution give cause for claims or liability for damages.

2.7 Cost Liability and Additional Costs

The owner assumes no responsibility and liability for costs incurred by the Respondents prior to the issuance of an agreement. The liability of the owner shall be limited to the terms and conditions of the contract. Respondents will assume responsibility for all costs not stated in their proposals. All unit rates either stated in the proposal or used as a basis for its pricing are required to be all-inclusive. Additional charges, unless incurred for additional work performed by request of the owner, are not to be billed and will not be paid.

2.8 Statutory and Other Requirements

2.8.1 Compliance with Laws

Any contract entered into between the contractor and the owner must be in accordance with and subject to compliance by both parties with the New Jersey Local Public Contracts Law. The contractor must agree to comply with the non-discrimination provisions and all other laws and regulations applicable to the performance of services there under. The respondent shall sign and acknowledge such forms and certificates as may be required by this section.

2.8.2 Mandatory Affirmative Action Compliance

No firm may be issued a contract unless it complies with the Affirmative Action requirements of P. L. 1975, C. 127 as identified in the documents attached hereto. The form shall be properly executed.

2.8.3 Americans with Disabilities Act of 1990

Discrimination on the basis of disability in contracting for the delivery of services is prohibited. Respondents are required to read American with Disabilities language that is part of the documents attached hereto and agree that the provisions of Title II of the Act are made part of the contract. The contractor is obligated to comply with the Act and hold the owner harmless.

2.8.4 Stockholder Disclosure

No corporation or partnership shall be awarded any contract for the performance of any work or the furnishing of any goods, unless, with receipt of the proposal of said corporation or partnership, there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own ten (10) percent

or greater interest therein. The Respondent shall complete and submit the form of statement that is included in this RFP.

2.8.5 Non-Collusion Affidavit

The Non-Collusion Affidavit, which is part of this RFP, shall be properly executed and submitted with the RFP response.

2.8.6 Business Registration P.L. 2009, c.315

Reforms Business Registration Certificate Filing; permits filing prior to award of contracts if not filed with bid. Effective with bids received and contracts awarded after January 18, 2010, this law removes the requirement of the Local Public Contracts Law ([N.J.S.A. 40A:11-23.2](#)) that required a bid to be rejected if the bidder failed to include a BRC with the bid, even though it may have been the otherwise lowest responsible bid. The law now allows the BRC to be filed anytime prior to award of the contract and the bidder had to have obtained the BRC prior to receipt of bids. This permits the BRC to be required with a bid, or submitted subsequently. If a BRC is required in a bid, but not submitted with the bid, it would be an immaterial defect; curable by being filed prior to award of the contract. A BRC is obtained from the New Jersey Division of Revenue. Information on obtaining a BRC is available on the internet at www.nj.gov/njbgs or by phone at (609) 292-1730.

2.8.7 Insurance and Indemnification

If it becomes necessary for the contractor, either as principal or by agent or employee, to enter upon the premises or property of the owner in order to construct, erect, inspect, make delivery or remove property hereunder, the contractor hereby covenants and agrees to take use, provide and make all proper, necessary and sufficient precautions, safeguards, and protection against the occurrence of happenings of any accident, injuries, damages, or hurt to person or property during the course of the work herein covered and his/her sole responsibility.

The contractor further covenants and agrees to indemnify and save harmless the owner from the payment of all sums of money or any other consideration(s) by reason of any, or all, such accidents, injuries, damages, or hurt that may happen or occur upon or about such work and all fines, penalties and loss incurred for or by reason of the violation of any owner regulation, ordinance or the laws of the State, or the United States while said work is in progress.

The contractor shall maintain sufficient insurance to protect against all claims under Workers Compensation, General Liability and Automobile and shall be subject to approval for adequacy of protection and certificates of such insurance shall be provided.

2.8.8 Pay to Play

Starting in January, 2007, business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000 from public entities in a calendar year. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

2.9 Multiple Proposals Not Accepted

2.10 Subcontractors – Not Permitted

2.11 Failure to Enter Contract

Should the respondent, to whom the contract is awarded, fail to enter into a contract within ten (10) days, Sundays and holidays excepted, the owner may then, at its option, accept the proposal of another respondent.

2.12 Commencement of Work

The contractor agrees to commence work after the date of award by the owner and upon notice from the using department.

2.13 Termination of Contract

If, through any cause, the contractor shall fail to fulfill in a timely and proper manner obligations under the Contract or if the contractor violates any requirements of the Contract, the owner shall thereupon have the right to terminate the Contract by giving written notice to the contractor of such termination at least thirty (30) days prior to the proposed effective date of the termination. Such termination shall relieve the owner of any obligation for the balances to the contractor of any sum or sums set forth in the Contract. The contractor agrees to indemnify and hold the owner harmless from any liability to subcontractors/suppliers concerning payment for work performed or goods supplied arising out of the lawful termination of the Contract by the owner under this provision. In case of default by the contractor, the owner may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby.

2.14 Challenge of Specifications

Any respondent who wishes to challenge a specification shall file such challenge in writing.

2.15 Payment

Invoices shall specify, in detail, the period for which payment is claimed, the services performed during the prescribed period, the amount claimed and correlation between the services claimed and the Proposal Cost Form.

2.16. Ownership of Material

The owner shall retain all of its rights and interest in any and all documents and property both hard copy and digital furnished by the owner to the contractor for the purpose of assisting the contractor in the performance of this contract. All such items shall be returned immediately to the owner at the expiration or termination of the contract or completion of any related services, pursuant thereto, whichever comes first. None of the documents and/or property shall, without the written consent of the owner, be disclosed to others or used by the contractor or permitted by the contractor to be used by their parties at any time except in the performance of the resulting contract. Ownership of all data, materials and documentation originated and prepared for the owner pursuant to this contract shall belong exclusively to the owner. All data, reports, computerized information, programs and materials related to this project shall be delivered to and become the property of the owner upon completion of the project. The contractor shall not have the right to use, sell, or disclose the total of the interim or final work products, or make available to third parties, without the prior written consent of the owner.

2.17 RECORDS FOR THE NEW JERSEY STATE COMPTROLLER

Pursuant to N.J.S.A. 52:15C-14(d), relevant records of private vendors or other persons entering into contracts with the County are subject to audit or review by the New Jersey Office of the State Comptroller. Therefore, the Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

3.0 SCOPE OF WORK- REFER TO TECHNICAL SPECIFICATIONS

4. Proposal Requirements as stated in Proposal Checklist

5. Evaluation, Review and Selection Process

The purpose of this section is to explain the criteria that will be used in evaluating the proposals.

5.1 Proposals to Remain Subject to Acceptance

RFP responses shall remain open for a period of sixty (60) calendar days from the submittal date. The owner may either award the Contract within the applicable time period or reject all proposals. The owner may extend the decision to award or reject all proposals beyond the sixty (60) calendar days when the proposals of any respondents who consent thereto may, at the request of the owner, be held for consideration for such longer period as may be agreed.

5.2 Rejection of Proposals

Rejection shall be made in accordance with the New Jersey Local Public Contracts Law.

5.3 Evaluation Process

An evaluation team will review all proposals to determine if they satisfy the Proposal Requirements, determine if a proposal should be rejected and evaluate the proposals based upon the Evaluation Criteria. The highest ranking respondent will then be recommended to the governing body for award of contract, based on most advantageous price and other factors.

5.4 Evaluation Criteria as stated in Technical Specifications and Below

The criteria considered in the evaluation of each proposal follows. The arrangement of the criteria is not meant to imply order of importance in the selection process. All criteria will be used to select the successful respondent.

CRITERIA EVALUATION

Evaluation criteria are stated on the following pages. The County references criteria from **URAC**, the Utilization Review Accreditation Commission. The County is requesting but not mandating that respondents are accredited through URAC. URAC's PBM Accreditation standards cover the PBM's contract terms and pricing structures; ensures access to drugs and pharmacies; provides for drug utilization management, formulary management, patient safety and customer service; and creates a process for PBM outcomes measurement and quality improvement.

Proposals shall be evaluated based upon pricing arrangements between the County and PBM, Formulary Management, Drug Utilization Review, Rebate Negotiations, Pharmacy Network Discounts, URAC accreditation (not mandated and if accredited), the use of Mail Service Pharmacies, and Disease Management Programs.

PROGRAM GOALS

We require a competitive program that will provide a wide range of benefits and ease to add medications along with controlling costs. The PBM will manage the County's (Sponsor) program. The County has the ability to pay biweekly and requires pass through of rebates in the form of a check as a component of the PBM program. The Respondents shall provide details of their rebate program.

The county reserves the right to request additional information and interview respondents for purpose of clarification. The County will require three verifiable references. The county will monitor the performance of the awarded PBM on an ongoing basis to ensure that our goals and terms of the contract are met.

Summary of Evaluation Criteria:

- Response to the Mandatory Proposal Requirements
- Response to Participation Standards (Technical Proposal)
- Understanding of the RFP and the owner's prescription benefit programs and needs
- Experience doing similar work for other local government units in the State of New Jersey
- Experience and background of the assigned project team primary consultant
- Depth, scope and experience with other services provided with this proposal
- Thoroughness of the proposal in explaining potential benefits of changes in the owner's health prescription benefit programs and needs
- Cost and basis of compensation
- Ability to complete the project in a timely manner

Evaluation Methodology

The format and content requirements for the Technical and Cost Proposals must adhere to the instructions contained in this section of the RFP. Failure to respond to a specific requirement may be used as a basis for rejection of the proposal from further consideration, or result in a score of "zero" or a "fail" for a particular item. Emphasis should be placed on conformance to the RFP instructions, responsiveness to requirements, and completeness and clarity of content.

Elaborate proposals are neither necessary nor desired. If the proposal is presented in a fashion that makes evaluation difficult or overly time consuming, it is likely that points will be lost in the evaluation process. Bidders shall not include any personal use items with the proposal.

5.4.1 Mandatory Proposal Requirements

THESE ARE ABSOLUTE REQUIREMENTS. FAILURE TO MEET ANY ONE OF THE REQUIREMENTS LISTED BELOW SHALL RESULT IN DISQUALIFICATION FROM FURTHER CONSIDERATION IN THIS BID PROCESS.

Please confirm the Bidder meets each of the requirements listed below:

1. The Bidder must have a minimum of five years of PBM experience. If a PBM has acquired or merged with another PBM, that firm's previous experience may count toward this time requirement. If this is the case, describe the relevant history.
2. The Bidder must currently manage 10,000 lives with at least one client with a minimum of 1,000 covered lives.
3. The Bidder must demonstrate, through its proposal, that its program includes the following elements:
 - a) An operational POS electronic adjudication process that shall be in compliance with all Federal and State regulations and mandates, as described herein, which include (but are not limited to): eligibility verification; POS edits and drug monitoring; audits; prior authorization; Drug Utilization Review; billing and reimbursement; e prescribing, and reporting. This must be real time on-line adjudication twenty-four (24) hours per day, seven (7) days per week.
 - b) An automated system that can interface with COUNTY OF MERCER systems, for eligibility and file transfers.
 - c) Proposed implementation timeline following execution of a contract.
4. The Bidder must accept the performance standards, corrective actions, Contractual Services Terms and Conditions identified in this RFP. Performance standards are included in this RFP.
5. Identify all owners and subsidiaries on the Stockholder Disclosure Statement.
6. The Bidder must meet all other submission requirements.
7. The Bidder must identify all clients that compose more than 10% of their business portfolio and the percentage.

5.4.2 Technical Proposal

Only proposals meeting the Mandatory Proposal Requirements will have their Technical Proposals reviewed. This review includes:

- Bidder Capability, Qualifications and Experience;

- Qualified Personnel and Location;
- Approach and Methodology for Implementation and Continued Operations;
- Work Statement Participation Standards;
- Overall appropriateness of Response;

Cost Evaluation

A description of how Bidders should structure the cost proposal is provided in this RFP. The Cost Proposal must be submitted and will be evaluated separately using the form in Attachment 1. Since there is no opportunity for Bidders to revise the pricing, the Bidder should carefully calculate and propose its prices for the services requested herein.

Lowest cost proposal divided by next low cost, multiplied by points

Example: cost assigned 30 points, lowest cost proposal \$100,000 next low \$120,000

(Divide the low cost by the next low) multiplied by 30 = $(100,000/120,000) * 30 = 25$

Low cost respondents earns 30 points, next low earns 25 points, etc.

Additional Information

Price shall be based on the requirements set forth. Any services not included as part of any resulting contract scope of services must be approved and authorized by the owner before such work is initiated. The owner shall pay for such approved services, at the rate or cost agreed upon between the owner and contractor, provided the respondent has provided a schedule of fees for additional services with this RFP.

5.5 Payment

Payment will be made on presentation of owner's voucher duly signed and executed.

Term of the contract: One Year with two, one-year options to extend.

5.5 Notice of Award

The successful respondent will be notified of the award of contract upon a favorable decision by the governing body.

COUNTY OF MERCER

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

The undersigned hereby acknowledges receipt of the following Addenda:

<u>Addendum Number</u>	<u>Dated</u>	<u>Acknowledge Receipt</u> (initial)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

No addenda were received:

Acknowledged for: _____
(Name of Bidder)

By: _____
(Signature of Authorized Representative)

Name: _____
(Print or Type)

Title: _____

Date: _____

Contract Language for BRC Compliance

Goods and Services Contracts (including purchase orders)


** Construction Contracts (including public works related purchase orders)*


N.J.S.A. 52:32-44 imposes the following requirements on contractors and all subcontractors that **knowingly** provide goods or perform services for a contractor fulfilling this contract:

- 1) the contractor shall provide written notice to its subcontractors and suppliers to submit proof of business registration to the contractor;
- 2) subcontractors through all tiers of a project must provide written notice to their subcontractors and suppliers to submit proof of business registration and subcontractors shall collect such proofs of business registration and maintain them on file;
- 3) prior to receipt of final payment from a contracting agency, a contractor must submit to the contracting agency an accurate list of all subcontractors and suppliers* or attest that none was used; and,
- 4) during the term of this contract, the contractor and its affiliates shall collect and remit, and shall notify all subcontractors and their affiliates that they must collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into this State.

A contractor, subcontractor or supplier who fails to provide proof of business registration or provides false business registration information shall be liable to a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration not properly provided or maintained under a contract with a contracting agency. Information on the law and its requirements is available by calling (609) 292-9292.

SAMPLE OF THE NEW JERSEY BUSINESS REGISTRATION CERTIFICATE

STATE OF NEW JERSEY BUSINESS REGISTRATION CERTIFICATE FOR STATE AGENCY AND CASINO SERVICE CONTRACTORS		DEPARTMENT OF TREASURY DIVISION OF REVENUE PO BOX 252 TRENTON, N.J. 08646-0252
TAXPAYER NAME: TAX REGISTRATION TEST ACCOUNT	TRADE NAME: CLIENT REGISTRATION	 John S. Tully Acting Director
TAXPAYER IDENTIFICATION#: 970-097-382/500	SEQUENCE NUMBER: 0107330	
ADDRESS: 847 ROEBLING AVE TRENTON NJ 08611	ISSUANCE DATE: 07/14/04	
EFFECTIVE DATE: 01/01/01		
FORM-BRC(08-01)		
This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.		

 STATE OF NEW JERSEY BUSINESS REGISTRATION CERTIFICATE	
Taxpayer Name:	TAX REG TEST ACCOUNT
Trade Name:	
Address:	847 ROEBLING AVE TRENTON, NJ 08611
Certificate Number:	1093907
Date of Issuance:	October 14, 2004
For Office Use Only:	
20041014112823533	

EEO/AFFIRMATIVE ACTION COMPLIANCE NOTICE
N.J.S.A. 10:5-31 and N.J.A.C. 17:27
GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

All successful bidders are required to submit evidence of appropriate affirmative action compliance to the County and Division of Public Contracts Equal Employment Opportunity Compliance. During a review, Division representatives will review the County files to determine whether the affirmative action evidence has been submitted by the vendor/contractor. Specifically, each vendor/contractor shall submit to the County, prior to execution of the contract, one of the following documents:

Goods and General Service Vendors

1. Letter of Federal Approval indicating that the vendor is under an existing Federally approved or sanctioned affirmative action program. A copy of the approval letter is to be provided by the vendor to the County and the Division. This approval letter is valid for one year from the date of issuance.

Do you have a federally-approved or sanctioned EEO/AA program? Yes ☐ No ☐
If yes, please submit a photostatic copy of such approval.

2. A Certificate of Employee Information Report (hereafter "Certificate"), issued in accordance with N.J.A.C. 17:27-1.1 et seq. The vendor must provide a copy of the Certificate to the County as evidence of its compliance with the regulations. The Certificate represents the review and approval of the vendor's Employee Information Report, Form AA-302 by the Division. The period of validity of the Certificate is indicated on its face. Certificates must be renewed prior to their expiration date in order to remain valid.

Do you have a State Certificate of Employee Information Report Approval? Yes ☐ No ☐
If yes, please submit a photostatic copy of such approval.

3. The successful vendor shall complete an Initial Employee Report, Form AA-302 and submit it to the Division with \$150.00 Fee and forward a copy of the Form to the County. Upon submission and review by the Division, this report shall constitute evidence of compliance with the regulations. Prior to execution of the contract, the EEO/AA evidence must be submitted.

The successful vendor may obtain the Affirmative Action Employee Information Report (AA302) on the Division website www.state.nj.us/treasury/contract_compliance.

The successful vendor(s) must submit the AA302 Report to the Division of Public Contracts Equal Employment Opportunity Compliance, with a copy to Public Agency.

The undersigned vendor certifies that he/she is aware of the commitment to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27 and agrees to furnish the required forms of evidence.

The undersigned vendor further understands that his/her bid shall be rejected as non-responsive if said contractor fails to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27.

COMPANY: _____ SIGNATURE: _____

PRINT NAME: _____ TITLE: _____

DATE: _____

(REVISED 4/10)

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302, electronically provided by the Division and distributed to the public agency through the Division's website at: www.state.nj.us/treasury/contract_compliance

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

STOCKHOLDER DISCLOSURE CERTIFICATION

No corporation or partnership shall be awarded any contract for the performance of any work or the furnishing of any materials or supplies, unless, prior to the receipt of the bid or accompanying the bid of said corporation or partnership, there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own ten (10) percent or more of its stock of any class, or of all individual partners in the partnership who own a ten (10) percent or greater interest therein. Form of Statement shall be completed.

The Attorney General has concluded that the provisions of N.J.S.A. 52:25-24.2, in referring to corporations and partnerships, are intended to apply to all forms of corporations and partnerships, including, but not limited to, limited partnerships, limited liability corporations, limited liability partnerships, and Subchapter S corporations.

STOCKHOLDER DISCLOSURE CERTIFICATION
This Statement Shall Be Included with Bid Submission

☐ I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

OR

☐ I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

Check the box that represents the type of business organization:

- | | | |
|---|--|--|
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Corporation | <input type="checkbox"/> Sole Proprietorship |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Limited Liability Corporation | <input type="checkbox"/> Limited Liability Partnership |
| <input type="checkbox"/> Subchapter S Corporation | <input type="checkbox"/> Non-Profit Corporation | |

This form shall be completed and signed. Failure of the bidder to submit the required information is cause for automatic rejection of the bid.

Stockholders:

Name: _____

Name: _____

Home Address: _____

Home Address: _____

Name: _____

Name: _____

Home Address: _____

Home Address: _____

Name: _____

Name: _____

Home Address: _____

Home Address: _____

LEGAL NAME OF BUSINESS _____

Signature _____ Date _____

Printed Name & Title _____

P.L. 2012 BID OR PROPOSAL PROHIBITED

C.52:32-57 "P.L. 2012, c.25 prohibits State and local public contracts with persons or entities engaging in certain investment activities in energy or finance sectors of Iran."

I am the duly authorized agent making certification that there has been no engagement in certain investment activities in energy or finance sectors of Iran as prohibited by P.L. 2012, c.25

NAME OF BIDDER

SIGNATURE OF AUTHORIZED REPRESENTATIVE

TITLE

DATE

AMERICANS WITH DISABILITIES ACT OF 1990
Equal Opportunity for Individuals with Disability

The CONTRACTOR and the County of Mercer do hereby agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. §12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs and activities provided or made available by public entities, and the rules and regulations promulgated pursuant hereunto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the County pursuant to this contract, the CONTRACTOR agrees that the performance shall be in strict compliance with the Act. In the event that the CONTRACTOR, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the CONTRACTOR shall defend the County in any action or administrative proceeding commenced pursuant to this Act. The CONTRACTOR shall indemnify, protect, and save harmless the County, its agents, servants, and employees from and against any and all suits, claims, losses demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The CONTRACTOR shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the County grievance procedure, the CONTRACTOR agrees to abide by any decision of the County which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the County or if the County incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the CONTRACTOR shall satisfy and discharge the same at its own expense.

The County shall, as soon, practicable after a claim has been made against it, give written notice thereof to the CONTRACTOR along with full and complete particulars of the claim. If any action or administrative proceedings is brought against the County or any of its agents, servants, and employees, the County shall expeditiously forward or have forwarded to the CONTRACTOR every demand, complaint, notice, summons, pleading, or other process received by the County or its representatives.

It is expressly agreed and understood that any approval by the County of the services provided by the CONTRACTOR pursuant to this contract will not relieve the CONTRACTOR of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the County pursuant to this paragraph.

It is further agreed and understood that the County assumes no obligation to indemnify or save harmless the CONTRACTOR, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the CONTRACTOR expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the CONTRACTOR'S obligations assumed in this agreement, nor shall they be construed to relieve the CONTRACTOR from any liability, nor preclude the County from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

EXCERPTS FROM THE EEOC SEXUAL HARASSMENT GUIDELINES

PART 1604 -- GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

1604.11 Sexual Harassment

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII (of the Civil Rights Act of 1964). Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, The Commission (EEOC) will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can be shown that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility, which the employer may have with respect to the conduct of such non-employees.

INSURANCE AND INDEMNIFICATION REQUIREMENTS

If it becomes necessary for the consultant, either as principal or by agent or employee, to enter upon the premises or property of the County, the consultant hereby covenants and agrees to take use, provide and make all proper, necessary and sufficient precautions, safeguards, and protection against the occurrence of happenings of any accidents, injuries, damages, or hurt to person or property during the course of the work herein covered and be his/her sole responsibility.

The consultant further covenants and agrees to indemnify and save harmless the County from the payment of all sums of money or any other consideration(s) by reason of any, or all, such accidents, injuries, damages, or hurt that may happen or occur upon or about such work and all fines, penalties and loss incurred for or by reason of the violation of any County regulation, ordinance or the laws of the State, or the United States while said work is in progress.

The consultant shall maintain sufficient insurance to protect against all claims under Workers Compensation as statutorily required, General Liability and Professional Liability in the amount of \$1,000,000.00 single occurrence and \$2,000,000.00 general aggregate and Automobile Insurance in the amount of \$1,000,000.00 combined single limit. Vendors are responsible to provide updated certificates as policies renew. Depending upon the scope of work and goods or services provided, specific types of insurance may not be required. The Mercer County Division of Insurance and Property Management will make this determination.

In all cases where a Certificate of Insurance is required, the County of Mercer is to be named as an additional insured and named as the certificate holder as follows: "County of Mercer, 640 South Broad Street, PO Box 8068, Trenton, NJ 08650-0068". The Certificate shall contain a 30-day notice of cancellation.

WAIVER OF SUBROGATION CLAUSE

Consultant, as a material part of the consideration to be rendered to the County, hereby waives all claims against the County for damages to the goods, wares and merchandise in, upon or about said premises, and consultant will hold the County exempt and harmless from any damage and injury to any such person or to the goods, wares or merchandise of any such person, arising from the use of the premises by the consultant or from failure of the consultant to keep the premises in good condition and repair as herein provided.

Dated and Signed

INSURANCE CERTIFICATE

PLEASE TAKE NOTE OF THE FOLLOWING CHANGE

As you may be aware, there has been a recent change to the ACCORD insurance certificate which precludes placing the number of days for cancellation notification in the lower left hand box. You may fulfill the requirement for a 30-day notice of cancellation for a County of Mercer contract in any one of the following ways:

1. indicate a 30-day notice of cancellation in the Description of Operations box at the bottom of the certificate
2. indicate a 30-day notice of cancellation on a separate page
3. provide a copy of the cancellation clause from the policy (you do not need to provide a copy of the entire policy, only the page(s) referencing the cancellation clause)

If you need further clarification on this or other insurance certificate issues, please contact the Insurance and Property Management Office at 609-989-6655.

NON-COLLUSION AFFIDAVIT

STATE OF NEW JERSEY

COUNTY OF MERCER SS:

I, _____ of the City of _____,
in the County of _____, and the State of _____,

of full age, being duly sworn according to law on my oath depose and say that:

I am _____

of the firm of _____

bidder making the proposal for the above named Contract, and that I executed the said proposal with full authority so to do; that said bidder has not, directly or indirectly, entered into any agreement, participate in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named Contract; and that all statements contained in said proposal and in this affidavit are true and correct, and made with full knowledge that the County of Mercer relied upon the truth of the statements contained in said Proposal and in the statements contained in this affidavit in awarding the Contract for the said proposal.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bonafide employees or bonafide established commercial or selling agencies maintained by

(Name of Vendor)

Subscribed and sworn to before me

This _____ day of _____, 20____.

(Signature of Notary Public)

Notary Public of _____

My Commission expires _____, 20____

PROPOSAL

The undersigned bidder declares that he/she has read the Notice to Bidders, Instructions to Bidders, Affidavits and Specifications attached, that he/she has determined the conditions affecting the bid agrees, if this proposal is accepted, to furnish and deliver the following:

PHARMACEUTICAL BENEFITS MANAGEMENT FOR THE OFFICE OF INSURANCE AND PROPERTY MANAGEMENT FOR A PERIOD OF ONE YEAR WITH THE OPTION OF EXTENDING THE CONTRACT FOR TWO, ONE YEAR TERMS BASED UPON THE INDEX RATES

(SIGNATURE BY AUTHORIZED REPRESENTATIVE)

The undersigned is a Corporation, Partnership or Individual under the laws of the State of

_____ having its principal office at _____

COMPANY _____
ADDRESS _____
ADDRESS _____
NAME _____
TELEPHONE _____
FAX _____
E-MAIL _____
DATE _____

CONTRACT AWARD

Upon opening bids, pricing shall remain firm for a period of sixty (60) calendar days. In the event that the award is not made within sixty (60) calendar days, bidders may hold their bid consideration beyond sixty days or until the contract is awarded.

- ☐ Check here if willing to hold the pricing consideration beyond sixty days or until the contract is awarded.
- ☐ Check here if not willing to hold the pricing consideration beyond sixty days or until the contract is awarded.

AUTHORIZED SIGNATURE

EMERGENCY SERVICES

In the event of an emergency, Vendor will provide priority service for Mercer County.

VENDOR EMERGENCY COMPLIANCE

YES ☐

NO ☐

In the event of an emergency, identify your company procedure for emergency delivery of services should your facility be affected by a critical disruption:

[illegible]

COUNTY OF MERCER

Certification of Political Contributions (Effective February 1, 2005)

PROFESSIONAL BUSINESS ENTITY:

NAME AND POSITION OF FILING OFFICER

BUSINESS ADDRESS:

CITY STATE AND ZIP CODE:

Refer to the attached link:

http://nj.gov/counties/mercerc/news/publications/pdf/2004_14_ordinance.pdf

Mercer County Ordinance No. 2004-14 This Ordinance, effective February 1, 2005, provides that all professional business entities seeking a professional services contract on a no-bid basis with the County of Mercer or any of its boards, independent authorities or commissions are required to provide a sworn statement or certification that the professional business entity has not made and will not make a political contribution in violation of said Ordinance.

Certification I, the undersigned, certify that:

- (1) I have reviewed Mercer County Ordinance No. 2004-14 and understand the terms therein.
- (2) The following individuals and/or entities have not solicited a political contribution or made a political contribution in violation of the provisions set forth in Mercer County Ordinance No. 2004-14 (*No-Bid Professional Services Contracts*) in excess of the limits set forth in said Ordinance: (i) the professional business entity identified above; (ii) all principals who own or control 10% or more of the equity of the corporation, partnership or professional business entity including principals, partners and officers in the aggregate; (iii) any subsidiaries directly controlled by the professional business entity; and (iv) if the professional business entity is a natural person, that person's spouse and/or child, living at the same address.
- (3) I am duly authorized and empowered to make this certification on behalf of the professional business entity and those others referenced above.
- (4) The foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment including, but not limited to, the penalty terms set forth in Mercer County Ordinance No. 2004-14.

NAME: _____

TITLE: _____

DATE: _____

COUNTY OF MERCER
Disclosure of Political Contributions

Professional Business Entity: _____

Pursuant to Mercer County Ordinance No. 2004-14 all professional business entities with which the County of Mercer or any of its boards, independent authorities or commissions intends to award professional services contracts on a no-bid basis are required to disclose, among other things, all political contributions made within the twelve month period immediately preceding the date of the awarding of the contract or agreement to (1) a campaign committee or fund of any candidate for or holder of a public office within Mercer County government; (2) any municipal or county party committee; or (3) any political action committee (PAC) that is organized for the purpose of promoting or supporting Mercer County government candidates or officeholders. **Indicate "none" if no such contributions have been made.**

A separate Disclosure must be submitted by each of the following, defined as a "Professional Business Entity" under the Ordinance:

- (i) a professional business entity submitting a Disclosure on its own behalf;
- (ii) all principals who own or control 10 % or more of the equity of the corporation, partnership or professional business entity;
- (iii) any subsidiaries directly controlled by the professional business entity; or
- (iv) if a professional business entity is a natural person, that person's spouse and/or child, living at the same address.

Pertaining to Disclosure of Political Contributions to any political action committee (PAC) that is organized for the purpose of promoting/supporting Mercer County candidates/officeholders. Indicate "none" if no such contributions have been made.

Name of Political Action Committee	Date of Contribution	Amount of Contribution	Type of Contribution i.e., Cash, Check, Loan, In Kind	Purpose of Political Action Committee

Pertaining to Disclosure of Political Contributions to: any candidate committee and/or election fund of any candidate for or current holder of a public office within Mercer County government; and any municipal or county political party committee. Indicate "none" if no such contributions have been made.

Name of Committee or Fund	Date of Contribution	Amount of Contribution	Type of Contribution i.e., Cash, Check, Loan, In Kind	

I have reviewed Mercer County Ordinance No. 2004-14 and understand its terms. I certify that, to the best of my knowledge and belief, the foregoing statements by me are true and that I am duly authorized to make this certification. I am aware that if any of the statements are wilfully false, I am subject to punishment.

Company or Professional Business Entity:

By: _____

Name: _____

Title: _____

Date: _____

Relationship to Professional Business Entity: (See ii, iii and iv above)

If ii applies, list principals and % of ownership or control: _____

If iii applies, name and address of subsidiary: _____

If iv applies, name of spouse and/or child: _____

Proposal Checklist

The following checklist is provided as assistance to the development of the RFP Response. It in no way supersedes or replaces the requirements of the RFP. Please initial on the lines below for each document/section attesting to the fact that you have read and/or included the documents with your RFP.

Business Associate Agreement
(Refer to enclosed agreement) _____

Business Registration Certificate to be supplied _____

PRIOR TO CONTRACT AWARD _____

Acknowledgement of Receipt of Addenda _____

Stockholder Disclosure _____

Affirmative Action Statement _____

Affirmative Action Mandatory Language _____

Non-Collusion Affidavit _____

Certification and Disclosure of Political Contributions _____

Proof of URAC Accreditation
(IF ACCREDITED) _____

Proposal Requirements:

Two copies of Current Provider Network
Drug Utilization Review Program
Basis of All Pricing, Fees and Dispensing Fees
Compliance with Performance Standards
Compliance with URAC Standards as stated in specifications
Attachments 1, 3 through 7 (ATTACHMENT 2 FOR INFORMATIONAL PURPOSES ONLY)
Submit Pricing of top twenty-five medications prescribed for plan participants
(Attachment 5 and 5B for current pricing)
Drug Utilization Pricing (Attachment 6) cost proposal
All Miscellaneous Charges
Census, Group Structure, Claims experience,
formulary and list of exclusions _____

Three References _____

REQUEST FOR PROPOSAL FOR PHARMACEUTICAL BENEFITS MANAGER
CONTACT: ELIZABETH SCANNELLA
REAL ESTATE/RISK MANAGER

Description of Services:

The County of Mercer requires the services of a Pharmacy Benefit Manager (PBM) for processing and paying prescription drug claims for retail, mail order and specialty pharmacy services. The PBM shall develop and maintain the County's [formulary](#), contract with licensed pharmacies, and negotiate discounts and rebates with drug manufacturers. The PBM will report directly to Insurance and Property Management Office, Department of Personnel. There is no broker of record. The contract shall be awarded for one term.

SCOPE OF SERVICES: Mercer County is seeking to contract with a Proposer who will most closely mirror the current Plan design in RFP Specifications, Current Plan Design, and who has the capacity, requisite experience, and expertise to provide retail and mail order prescription drug services to County employees and dependents. The Plan will cover approximately 1,422 subscribers consisting of active employees (and encompassing a total of approximately 3,781 including dependents). The plan shall cover active employees only. The awarded PBM shall provide customer service between the hours of 7:00 A.M. and 8:00 P.M. Monday through Friday. If your proposal is based on number of eligible lives, please identify price breaks between the current and reduced number of eligible lives in your response to the RFP.

Specifications: General Information:

1. Proposals for a self-funded, cost plus administrative services only (ASO) plan, the billed amount per item entry shall be the total of: the Average Wholesale Price (AWP) of the prescribed medicine less any discount negotiated; the Contract dispensing fee; less the County employee fixed fee Co-Pay. Proposer may propose pricing based on a discount from the AWP, but in no case shall pricing exceed the AWP. The proposed dispensing fees shall be firm for the term of the Contract and any extension terms. Pricing based on "Maximum Allowable Cost (MAC)" must be provided based on actual utilization data provided in RFP. Proposers who submit a response for this pricing offer shall complete the excel spreadsheet attached to the RFP document, Proposers shall complete table "Pricing and Administrative Fees for Self-Funded - (ASO)" and return as a hard copy, and on a CD or Flash Drive, as an attachment to the RFP response. Premium Equivalents must be included.
2. Proposals for a fully insured plan are to set forth a monthly premium based on a four tier plan along with all plan specifics that may have an impact on the cost, quality or accessibility of the prescription drug services to be used by the employees/ members of the plan. Proposers who submit a pricing offer based

on a fully insured program shall complete the word table referenced "Fully Insured Pricing", and return the table completed as a hard copy, and on a CD or Flash Drive, as an attachment to the RFP response. Any additional charges should be documented on proposal summary pages, in the space provided for this response. For proposals for a fully insured plan, the monthly billing format must be included in the proposal and documented with examples.

In order to prepare for the program (e.g. open enrollment activities, data transfer arrangements, funding arrangement, Proposer coordination), Proposer must agree to provide these services without cost to Mercer County. Refer to the following.

Retail	90DaySupply
GroupI	Co-Pay
Generic	\$4.00
Brand	\$12.00
Non-Preferred	\$12.00

GroupII	
Generic	\$2.00
Brand	\$10.00
Non-Preferred	\$10.00

GroupIII	
Generic	\$6.00
Brand	\$14.00
Non-Preferred	\$14.00

MailOrder	90DaySupply
GroupsI,II,III	
Generic	\$0.00
Brand	\$0.00
Non-Preferred	\$0.00

Specialty	30DaySupply
GroupsI,II,III	
Generic	\$0.00
Brand	\$0.00
Non-Preferred	\$0.00

The plan shall cover active employees only. The awarded PBM shall provide customer service between the hours of 7:00 A.M. and 8:00 P.M. Monday through Friday.

There are various co-pay structures as reflected in the schedules on the previous page and based upon the employee's union contract; however, the majority of the County employees pay \$4.00 for generic medications and \$12.00 for brand medications.

AUTHORIZATIONS

Authorizations must be reviewed (if flagged by the PBM) and resolved between the PBM and Physician within 24 – 48 hours.

Respondents shall include with response:

Census, Group Structure, Claims experience, formulary and list of exclusions.

Contract Considerations:

As a public agency and governmental employer, the County requires a secure, transparent PBM arrangement that clearly outlines the respective parties' obligations and charges for services and goods furnished by the PBM.

The Proposed Vendor must pass thru all rebates and revenues received from any source that are derived from its contract, whether such revenues are rebates or discounts from pharmaceutical manufacturers for specific drugs, fees to add drugs to or promote formulary drugs or engage in outreach programs on behalf of pharmaceutical manufacturers, claims processing or administrative fees charged to retail pharmacies or pharmacies that are not affiliated with or owned by the proposed Vendor, or non-rebates for other purposes.

The Proposed Vendor shall reduce transaction costs between physicians and patients by requiring its mail order program to accept electronic prescriptions using a secured program, and to encourage its retail pharmacy network participants to do the same. The Proposed Vendor shall also require its retail pharmacy network participants to submit all claims for reimbursement electronically.

The Proposed Vendor shall have the technical capacity to administer multiple plan co-payment structures by union type, to generally encompass one of the following: three tiered formulary arrangement (generic, brand preferred, brand non-preferred); two tiered plus a substitution (generic, brand, and brand due to no generic available); or two tiered (generic and brand). The Proposed Vendor must have a broad network of retail pharmacies and must be able to guarantee access to national pharmacy chains across the country. The program shall also include a mail order component with zero dollar co-pay.

General Claims Administration:

The Proposed Vendor must utilize claims administration procedures and practices generally used in the healthcare/pharmaceutical benefits management industry that encompass eligibility administration, claims adjudication, drug utilization

review, reporting, establishing and maintaining a retail pharmacy network, member services, and account management including but not limited to the following:

- Receive and investigate claims for prescription benefits under the Plan, consult with providers of health care to assess whether prescriptions match the conditions for which such were prescribed, determine eligibility for such coverage under the Plan document and whether such prescriptions are covered by the Plan and what amounts are due and payable under the terms and conditions of the Plan;
- Authorizations must be resolved between the PBM and Physician within 24 – 48 hours;
- Furnish payments to the appropriate party/parties for medications dispensed under the terms of the Plan in a timely fashion;
- Provide written notifications to claimants within a reasonable time (using the time periods outlined under ERISA as a guide) following receipt of a claim for prescription benefits, indicating the disposition of their claims, and if there is a need for additional time to respond, the reasons therefore;
- Conduct periodic self-audits (using random sampling) on a yearly basis with Annual Reconciliation Disclosure Reports.
- Conduct fraud oversight and investigation. Provide a detailed summary of the vendor's internal fraud policies and procedures, including notification to the County.

Miscellaneous Administrative Responsibilities:

Premiums for COBRA rates– By no later than November 1st of each year of the contract, the Proposed Vendor shall calculate and provide the County with the monthly COBRA premium for Rx coverage for the upcoming year for the following categories: Single; Spouse/Partner; Dependent; and Family. ;

Plan changes – The Proposed Vendor will also be required to provide revisions to the Plan Document to bring it into compliance with all applicable federal and State laws, statutes and regulations with regard to how the County administers prescription coverage.

Administration Manual and Electronic Access:

The Successful vendor shall supply the County with three hard copies of an administration manual and a link to an electronic administration internet site to enable the County's agents to fulfill its responsibilities for enrollment and other purposes. The terms of the administration manual shall not conflict with applicable federal or State law, the terms of the Plan or this RFP.

The Successful vendor shall make available to designated agents of the County direct access, via secure internet site, to its claims processing, record keeping and enrollment systems for the purpose of retrieving subscriber/participant information, authorizing prescriptions, adding participants, etc. A newly authorized prescription shall be available immediately or no later than one (1) hour from the authorization.

The Proposed Vendor shall have a dedicated company representative who will be able to assist County agents with any issues. In addition, there shall be a toll-free customer service number available at least from 8:00 a.m. - 8:00 p.m. for County staff and employees for assistance with routine questions or problems. Authorizations must be approved within 24 – 48 hours.

Drug Utilization Review Program:

Describe how the Prospective Vendor implements a Drug Utilization Review program that encompasses, but not limited to, these tasks:

- Determine patient's eligibility under the Plan;
- Gender contraindication
- Assess whether the prescription is covered under the Plan;
- Detect and eliminate redundant or duplicate medication orders (to include electronic correlation between retail and mail order pharmacies);
- Monitor patient subscriptions by dosage (changes in prescription strength) and usage (e.g., frequency of refills, indications of addiction/ abuse);
- Determine what effect or interaction the new prescription may have upon existing prescriptions;
- Identify prescriptions that are considered to be "maintenance medications" for chronic conditions;
- Conduct early refill management;
- Encourage brand to generic conversions;
- Conduct daily dosage reviews;
- How standard appropriateness of Use and quantity limit protocols are applied;
- Suggest more suitable/effective and/or lower priced alternative medications consistent with an established formulary.

Data Maintenance and Reporting:

In compiling data and analyzing claims, the Proposed Vendor shall identify all fulfilled prescriptions using the 11 digit National Drug Code (NDC).

Medications dispensed shall be identified by both NDC and ICD-9 coding (using Major Diagnosis Categories established by the AHRQ – Agency for Healthcare Research & Quality).

REQUIRED MONTHLY REPORTING (IN EXCEL FORMAT)

Standard monthly reports shall encompass these components and shall be forwarded electronically to the Risk Manager by the fifth of each month:

- Number of scripts dispensed (by applicable category - retail or mail order; in network v. out of network; generic, brand preferred, brand non-preferred, etc., and in percentage to total number of scripts);
- Overall plan costs (to include aggregate co-payment collected, amount paid by Plan, aggregate ASP, AWP or ASP [defined in "Medication Pricing" section], total ingredient costs, and dispensing fees, and percentage discount;
- Costs per script (ingredient cost by applicable categories, dispensing fee, amount paid by Plan, amount paid by member);
- Number of scripts by Major Diagnosis Category;
- Any other standard, descriptive information that enables the County to track usage and costs by applicable categories.
- Detailed Rebate information
- The formulary rebate will be provided to the County at monthly and reflected in the monthly reporting.
- The formulary shall be provided to the Risk Manager on monthly basis.

A monthly report shall be forwarded to the County no later than the 5th of the month providing the following data: breakout of the cost of prescriptions for the previous month and each preceding month in the calendar year by the following categories: single, dependent, family, spouse/partner.

Rolling annual reports (provided monthly) shall include these components:

- Total Plan payments for the preceding month;
- Total number of scripts dispensed;
- Average price per script (for all categories of scripts combined);
- Percentage change over the preceding month (and when applicable, over the same month one year prior), to include percentage change over prior month or year where applicable;
- Number of eligible members per tier (single, spouse/partner, dependent and family);
- Change in number of eligible members per tier over the preceding month (and when applicable, over the same month one year prior) to include percentage change over prior month or year where applicable;
- Any other standard, descriptive information that enables the County to track usage and costs by applicable categories.
- Total program costs and savings for the 12 month period ending December 31st to include negotiated discounts, pharmacy revenues passed through, savings through DUR/clinical case management, employee contributions/co-payments, plan payments for retail and mail order, and cost per member, per month;
- Information that compares the County's costs to the Proposed Vendor's total book of business, to include advice on how to achieve better performance results and lower costs;
- Relevant lists of top 25 drugs by ingredient cost, major therapeutic area, by total amount paid per medication, by number of scripts, number of

patients, etc.;

- Cost savings by clinical case management/DUR programs for various, prevalent medical conditions and medications;
- Other information to be determined between the County and Proposed Vendor.
- Proposed Vendor shall meet with County agents to review the plan, make recommendations for cost savings

Reporting

The Proposer should include as ample standard reporting package, listing all available reports and including frequency. Indicate time needed to produce each report. The Proposer must produce a standard reporting package in both paper and electronic format (EXCEL) to the County (included in Administrative Fees). The frequency and detail of each reporting package should include, but not be limited to the following:

Monthly:

Utilization Management reports ,by employee group and in total to include but not limited to the following;

- 1.Utilization Summary
- 2.Group Utilization Summary
- 3.Brand/Generic/Non formulary Utilization Summary
- 4.Per member/Per month (PMPM) Summary
- 5.Annual Executive summary
- 6.Drug Utilization Review Reports
- 7.Therapeutic Drug Management Program Reports

Quarterly Summary

1. An executive summary containing a narrative of significant accomplishments, plan performance, and account management issues log progress from prior month.
2. A narrative or newsletter on clinical developments in the marketplace, such as new major drugs and brand names going generic or over-the counter.

Standard Year-End Reporting Package

1. Year-end summary of the monthly reports
2. Full financial and enrollment experience for the previous 12 months
3. Annual plan performance evaluation and outlook for subsequent plan years
4. Claims lag report over 24-month period, showing total payments by incurred and paid months.
5. Annual performance guarantee measurements

Audits:

The Proposed Vendor shall permit reasonable, annual audits to be conducted at the expense of the County. The County shall have the sole right to designate an auditor. Such audit rights shall entitle the County's designated auditor to examine all revenues and expenses incurred by the Proposed Vendor, all claims data regarding subscribers and covered persons and any other pertinent, reasonable information required by the designated auditor to enable it to ascertain compliance with the terms of the PBM Agreement. The designated auditor shall prepare preliminary and final reports upon request by the County and shall disclose such reports to the County and the Proposed Vendor. Said reports shall be kept strictly confidential.

Claims Adjudication:

The Proposed Vendor shall provide Claims adjudication services for all urgent and non-urgent appeals from denials of medications resulting from the application of the Plan document to the submitted prescription. The Proposed Vendor shall employ the services of qualified medical or pharmaceutical professionals who shall be capable of interpreting the terms of the Plan document to determine whether the prescribed medication is covered by the Plan and is clinically appropriate based upon the information, criteria and policies that formed the basis of denying the claim, and other review such as coordination of benefits, etc. The Proposed Vendor's claims adjudication responsibilities shall conform to regulations issued by any federal or applicable state departments or agencies regarding the subject matter, including regulations related to response times.

PHARMACEUTICAL BENEFITS MANAGER PROPOSAL REQUIREMENTS

The County reserves the right to choose the scope of services to be performed by the successful vendor. **Proposals may be selected based upon the best costs for core services only, core services plus select optional services, or core services and all services combined.** Because representatives of the County must evaluate comprehensiveness of services and costs for services, please be as clear as possible in responding. Please provide any additional information that may help such representatives understand the Proposal. Respondents shall state the method of providing the services stated in this RFP.

- Provide two (2) copies of your current provider network.
- Respondents shall factor administrative costs into the proposal including network access.
- Drug Utilization Review (DUR) charges shall be included in the services provided.
(Note: Refer to the essential requirements that must be met for a DUR program.)
- Shall provide monthly reports, rolling annual reports (on a monthly basis) and annual (calendar) year reports (due no later than March 5th or the anniversary of the contract).
- Shall serve as the Claims Adjudicator to respond to urgent and non-urgent denials of medications.
- The Proposed Vendor shall supply enrollment and enrollment change forms electronically and shall provide hard copy forms as well.
- Provide a mirrored program to the County's Rx program currently in place and an alternative with clinical management program.
- Explain your online system and provide a link to view, change, update enrollees and to authorize prescriptions for enrollees, etc.
- For any drugs that do not have a published ASP, AWP or WAC, will drug costs be charged to the Plan at a lower rate than Maximum Allowable Cost (MAC)? (If so, under what circumstances?)
- The Prospective Vendor shall disclose when and how often prices for generic medications are reduced and cost savings passed along to the County.
- If the cost to the Plan for a generic medication is less than a participant's co-payment, the participant shall be charged the cost of the generic medication.

- Indicate whether "bulk purchase savings" over the discounted costs of AWP (or other pricing structure) will be shared with the County and if so, the cost sharing arrangement.
- Indicate whether the County's prices will remain fixed for the length of the PBM agreement or whether the Prospective Vendor employs dynamic market pricing to pass along discounts for drugs that become cheaper over time.
- Explain how "specialty drugs" such as those produced by biotechnology companies are priced, whether such pricing is fixed or flexible and how often pricing is reviewed to pass along savings to the County. (Note: reimbursement for specialty drugs must be consistent with the terms of coverage under the Plan document.)
- Quantities used to fulfill mail order scripts shall be three times greater than the retail subscription and shall be of comparable strength unless amended by the patient's physician after consulting with the pharmacist. (Example: if a 30 day retail supply encompasses ten pills, then a 90 day mail order supply shall encompass thirty pills.)
- Dispensing shall conform to all federal, state and local law and the terms of the contract with the County.
- The Proposed Vendor shall outline its formulary procedures and explain how it categorizes drugs as brand preferred versus generic or brand non-preferred. A current formulary list shall be available at all times on the Proposed Vendor's website. The Proposed Vendor shall also alert users of medications 30 days in advance of a change in status from either generic to brand preferred, or brand preferred to brand non-preferred.
- Method to correct deficiencies as stated in Performance Standard.

PROPOSAL SUMMARY FINANCIALPROPOSAL

Respondents are required to Request Attachments (Top Twenty-Five Meds and Formulary Drug Proposal Page) following release of RFP. The County will provide worksheets.

1. SELF-FUNDED

ASO proposer is required to return:

1. Attachment 1 Utilization by Group
2. Attachment 2 Pricing and Administrative Fees for Self-Funded (ASO)
3. Attachment 4 Service Performance Guarantees WORD table
4. Attachment 5 and 5B for top twenty-five medications
5. Attachment 6 Formulary Drug List
Excel Submitted on CD or Flash Drive with
proposal
6. Attachment 7, Business Associate
Agreement
7. Implementation/Work Plan
8. All Mandatory Documents as outlined in the RFP

Sample Documents Required:

Reporting Package, Communication Materials Invoice

2. FULLYINSURED:

Proposers must return the following documents:

1. Attachment 3 Fully Insured Pricing Table
2. Attachment 4 Service Performance Guarantees WORD table
3. Attachment 6 Formulary Drug List –
EXCEL submitted on CD or Flash Drive
with proposal
4. Attachment 7, Business Associate
Agreement
5. Implementation/Work Plan
6. All Mandatory Documents as outlined in the RFP

Sample Documents Required:

Reporting Package, Communication Materials Invoice

Attachment One							
PRICING FOR SELF-FUNDED - (ASO) (UTILIZATION BY GROUP)							
Proposer Name	Retail Pharmacy		Mail Order Pharmacy		Specialty Drugs		
	Brand	Generic	Brand	Generic	Retail	Mail	Totals
Total Rx's							
Undiscounted Ingredient Cost							
Undiscounted Ingredient Cost	%	%	%	%	%	%	
Dispensing Fee Per Rx	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Admin Fee Per Rx	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Admin Fee Per Employee Per Month	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Rebate Per Rx	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Net Total Cost							
Generic Pricing	Retail	Mail Order					
MAC Discount if applicable	%	%					
% of Generic Claims that Adjudicate under MAC	%	%					
Discount for Claims That do not adjudicate under MAC	%	%					
Generic Weighted Average	%	%					

Attachment 2

**PRICING AND ADMINISTRATIVE FEES FOR SELF FUNDED – ASO
FOLLOWING FOR INFORMATION ONLY, DO NOT SUBMIT**

A.	Retail Pharmacy Pricing: the lower of UCR OR	
	Brand Drugs:	AWP-%+\$ Dispensing Fee
	MAC(Max Allowable Cost) Generic Drugs	NetMAC + \$ Dispensing Fee
	Non-MAC Generic Drugs	AWP-%+\$ Dispensing Fee
B.	Mail Service Pharmacy Pricing:	
	Brand Drugs:	AWP-%+\$ Dispensing Fee
	MAC(Max Allowable Cost) Generic Drugs	NetMAC + \$ Dispensing Fee
	Non-MAC Generic Drugs	AWP-%+\$ Dispensing Fee
	Are Shipping Costs Included in dispensing fee?	
	Are pre-addressed, postage paid Rx mail order envelopes included in your base fee?	
C.	Specialty Pharmacy Pricing: Include Biologicals/injectable Detail any exception to above pricing:	AWP-%+\$ Dispensing Fee
D.	Administrative Fees	
	Retail base claims processing fee (per paid/reversed claim)	\$
	Mail based claims processing fee (per paid/reversed claim)	\$
	Direct member reimbursement (per submitted claim)	\$
	Submission of eligibility (From paper documents)	\$
	Start up (Per Person) (\$ Minimum) if applicable	\$
	Updates per person (Number of "no charge" manual updates per month	\$
		\$
	Additional/Replacement ID Cards (set of Two)	# of _ID Cards included in base price
E.	Drug Utilization Review	\$ PMPM - if not included in base fee
F.	Therapeutic Drug management Program	\$
G.	Non-Standard reports/custom programming if applicable	\$ Cost per report or \$ Per Hour
H.	Formulary Sharing:	\$ Per all paid retail
	Guaranteed Rebate	

Attachment 3				
Fully Insured Pricing				
Tier Group #1	Quantity	Monthly Cost Per Tier	Cost Per month Total Per Tier	Rate Guarantee in Years
Employee Only			\$0.00	
Employee & Spouse			\$0.00	
Employee & Children			\$0.00	
Employee & Family			\$0.00	
OAD Cost				
Tier Group #2	Quantity	Monthly Cost Per Tier	Cost Per month Total Per Tier	Rate Guarantee in Years
Employee Only			\$0.00	
Employee & Spouse			\$0.00	
Employee & Children			\$0.00	
Employee & Family			\$0.00	
OAD Cost				
Tier Group #3	Quantity	Monthly Cost Per Tier	Cost Per month Total Per Tier	Rate Guarantee in Years
Employee Only			\$0.00	
Employee & Spouse			\$0.00	
Employee & Children			\$0.00	
Employee & Family			\$0.00	
OAD Cost				

Performance Standards:

Vendor's automated system: availability rate for each contract year 99.5% or greater

Dispensing Accuracy Rate: for each contract year 99.996% or greater

Non-protocol prescriptions: for Mail Order for each contract year: dispensed on average within two (2) days

All other mail order prescriptions dispensed on average within three (3) days following vendor's receipt of the prescription

Identification cards: each contract year 98% or greater will be mailed by vendor within an average of four (4) days after receipt by vendor of eligibility list by County

Vendor's toll free member service telephone line: each contract year the Average Speed of Answer will be on average 30 seconds or less from the time the individual selects an option (ex: member service rep option)

Vendor's response to written inquiries: 95% or greater response rate on average within five (5) business days after receipt of the inquiry

Telephone abandonment rate: during each contract year 5% or less of all incoming calls. Excludes calls pertaining to specialty drugs.

Vendor response to claims: 97% or greater for direct reimbursement paper claims within an average of five (5) business days and within an average of ten (10) days for all other claims

Claims Adjudication Accuracy Rate: on average 98.5% or greater

Member Satisfaction rate: vendor shall measure member satisfaction by conducting a member survey. The Member Satisfaction Rate shall be 90% or greater for each contract year.

First Call Resolution Rate: 93% or greater for each contract year. Excludes calls pertaining to specialty drugs.

All information provided to the awarded vendor to perform its obligations under the contract will be considered confidential, used only for implementation of the contract, and will not be released or used for any purposes not authorized by the County. Permission to use such information must be authorized by the County in writing. Furthermore, vendor will comply with all laws governing patient confidentiality including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Attachment 4

SERVICE PERFORMANCE GUARANTEES

	SERVICE PERFORMANCE STANDARDS	Guarantee
1	Mail Order Claims Processing Time a. Average turnaround time for Rxs requiring NO intervention in business days measured from date mail order received to date mail order shipped. b. Average turnaround time for Rxs received via phone, fax or email requiring NO intervention in business days measured from date order received to date mail order shipped.	_____ Business days _____ Business Days
2.	Mail Order Claims Processing Accuracy a. Percent Rxs data input with NO errors. B .Percent Rxs filled with no errors c. Percent Rx packages shipped with no errors d. Overall dispensing accuracy rate	_____% _____% _____% _____%
3.	Customer Service a. Average time in seconds to answer customer service calls b. Percent of calls abandoned	_____sec _____%
6	Account Service a. Percent of calls resolved within 24 hours of receipt b. Number of days for a response to a written inquiry	_____% _____Days
7.	Implementation a. Terms of guarantee to insure that all services are implemented as proposed within specified time frame. b. Conditions or exceptions	INCLUDE

**RESPONDENTS SHALL DESCRIBE COMPLIANCE WITH THE FOLLOWING URAC STANDARDS
LIMIT RESPONSE TO FIVE PAGES FOR ALL FOLLOWING:**

Standards	Area Affected	Description
Core 1-12	Organizational Quality	The PBM has: Organizational Structure Defined, Policies and Procedures Articulated Staff Qualifications Defined, Staff Credentialing Enforced Robust Staff Training, Rigorous Regulatory Compliance, Delegation to Business Partners Monitored
Core 13	Rigorous Information Management Required	Data integrity Data confidentiality and security Disaster recovery
Core 22	Communication Practices Monitored	PBM informs consumers and clients how to obtain services and submit a complaint or appeal
Core 23	Consumer Safety Promoted	PBM can identify and react to situations that could create potential harm to members/employees
Core 24	Confidentiality Maintained	PBM maintains confidentiality of individual health information, Addresses oral, written, or electronic communication and records that are transmitted or stored
Core 25	Consumer Satisfaction Promoted	PBM collects and evaluates information about consumer satisfaction with services
Core 26	Consumer and Client Services Accessible	Consumers or clients have access to the PBM via telephone, mail, and internet
Core 27 Core 28 Core 29 Core 30 Core 31 Core 33 Core 34	Rigorous Complaints and Appeals Process Defined Quality Management Program Defined	PBM has a process in place to handle complaints and appeals Quality improvement program includes: Performance measures on activities Monitoring of performance measures Efforts to improve performance measures
Core 35 Core 36	Quality Improvement Projects Implemented	Quality improvement projects include: Quantifiable performance measures, At least annual measure of baseline performance, Established strategies, goals, documentation, and analysis

CUSTOMER SERVICE, COMMUNICATIONS, AND DISCLOSURE STANDARDS

LIMIT RESPONSE TO FIVE PAGES

Standard	Area Affected	Description
CSCD1 CSCD2	Consumer Information Disclosed	<p>PBM informs consumers about available information resources and assistance including:</p> <ul style="list-style-type: none"> How to access pharmacy directory • Covered benefits and coverage guidelines • Consumer's costs; including deductibles, co-pays, co-insurance, • annual and lifetime co-insurance limits, and changes that could occur during the enrollment period Consumer's benefit options and implications of these decisions • Evidence-based health information and content for common • conditions, diagnoses, treatment diagnostics, and interventions Information and tips to assist in interactions, such as "Financial • decision-making for pharmacy benefits" Instructions on how to receive assistance via e-mail, telephone, or in • person Monitor and update existing communication materials •
CSCD4	Business Information Disclosed	<p>PBM discloses business model including:</p> <ul style="list-style-type: none"> Potential conflicts of interest that affect clinical or financial decisions • Sources of revenue • Pricing structure for PBM services •
CSCD5	Client Audit Rights Maintained	<p>PBM provides verification so that the client can ensure disclosures are comprehensive and accurate</p>
CSCD6 CSCD7 CSCD8	CallCenter Operations Defined	<p>Call center provides consumers, physicians, and other prescribers:</p> <ul style="list-style-type: none"> Information on claims processing, benefit coverage, claims • submission, and claims payment Assistance during hours of working pharmacists • Call answering time 30 seconds on average • Call abandonment not to exceed 5 percent •
CSCD9	Multiple Communication Formats Required	<p>PBM provides information to consumers in multiple formats and media so that all consumers have access to relevant information</p>
CSCD10 CSCD11	Health Literacy and Cultural Sensitivity Encouraged	<p>PBM provides health care information in a format (or language) that is understandable by the layman and helps consumers understand health care decisions</p>

PHARMACY DISTRIBUTION CHANNEL STANDARDS ADDRESS ISSUES RELATED TO ACCESS, AVAILABILITY, QUALITY AND SAFETY REGARDLESS OF WHICH PHARMACY DISTRIBUTION CHANNEL IS ADDRESSED

(LIMIT RESPONSE TO FIVE PAGES)

STANDARDS	AREA AFFECTED	DESCRIPTION
Pharm DC 1 Pharm DC 2	Scope of Distribution Channels Defined	<p>PBM clearly defines the:</p> <p>Distribution channels offered (e.g. pharmacy network, mail service • pharmacies, or specialty pharmacies)</p> <p>Types of pharmacy services offered within each distribution • channel</p> <p>Geographic area served by each distribution channel •</p>
Pharm DC 3	Quality and Safety Criteria Articulated	PBM can identify and address concerns related to quality and safety of drug distribution, quality of service
Pharm DC 4	Network Access and Availability Articulated and Out of Network Criteria Articulated	PBM ensures that members have access to prescriptions when their pharmacies don't have them, or when members are traveling
Pharm DC 5	Robust Pharmacy Relations Maintained	<p>PBM maintains a participating pharmacy relations program that includes:</p> <p>A participating pharmacy communications plan with updated • network information for new and on-going programs and processes</p> <p>Assistance for participating pharmacies and their staff regarding • pharmacy network issues</p> <p>Suggestions and guidance from participating pharmacies about • how the pharmacy network can best serve consumers</p>

DRUG UTILIZATION MANAGEMENT STANDARDS ADDRESS KEY ISSUES RELATED TO DRUG USE MANAGEMENT AND EMPHASIZE THE IMPORTANCE OF BASING DRUG MANAGEMENT DECISIONS ON CLINICAL INFORMATION AND OFFERING THE CONSUMER ALTERNATIVES TO DECISIONS IF THEY SHOULD BE NEEDED (LIMIT RESPONSE TO FIVE PAGES)

Standards	Area Affected	Description
DrUM 1 DrUM 2	Coverage Decisions Clinically-Based	<p>PBM has policies and procedures for identifying the optimal drug and evaluating the available data to address discrepancies and misuse of drugs.</p> <p>PBM bases formulary system decisions on a thorough evaluation of the benefits, risks, and potential outcomes for consumers</p>
DrUM 3 DrUM 4 DrUM 7 DrUM 17 DrUM 18 DrUM 19	Clinical Review Criteria Defined	<p>PBM has qualified prescribers and other clinicians develop and use clinical review criteria that are based on current clinical principles</p> <p>Clinical review criteria is annually evaluated and updated by qualified personnel</p> <p>Review determinations are based solely on the clinical information available to the PBM at the time of the review</p>
DrUM 12	Non-Formulary Exceptions Communicated	PBM informs consumers of how to request coverage of a non-covered prescription drug
DrUM 14	Decision Notice Required	PBM issues a written notification of the non-certification decision to the consumer and prescriber
DrUM 20 DrUM 22 DrUM 23 DrUM 27	Consumer-Friendly Appeals Process Defined	<p>PBM provides access to an appeal process, may be only a referral to the plan administrator who makes the decision. Written information on rights to appeal are available to the consumer and prescriber, including the process involved</p> <p>The consumer and prescriber can submit information relating to the case and the case is evaluated by a qualified, clinical peer. If the case is judged for the consumer, then the PBM must act on the decision. Consumer and prescriber are notified in writing of the decision with information on rights to further appeal, the process involved, and reasons for non-certification</p>

FORMULARY DEVELOPMENT STANDARDS TO ADDRESS ISSUES RELATED TO FORMULARY MANAGEMENT AND PHARMACY AND THERAPEUTICS (P&T) COMMITTEES TO ENSURES THAT THE EMPLOYEE IS PROTECTED BY FORMULARY DECISIONS THAT ARE CLINICALLY APPROPRIATE AND THAT THE COUNTY IS PROTECTED FROM HIGH COSTS OF DRUGS WHEN IT IS NOT NECESSARY (LIMIT RESPONSE TO FIVE PAGES)

Standards	Area Affected	Description
PTFD1 PTFD2	Effective Formulary Development Required	PBM has a process to promote clinically appropriate, safe, and cost-effective drug therapy Process should include a P&T Committee, a formulary management decision making process, and a process for regular evaluation and review
PTFD3	Formulary Decisions Therapeutically-Based	Formulary decisions based on cost factors only after safety, efficacy and therapeutic need have been established
PTFD4	Formulary Stakeholders Informed	PBM has a process to inform all stakeholders of formulary decisions and rationale PBM discloses the existence of formularies and has copies of the formulary readily available Information includes: cost containment measures; the procedures for obtaining non-formulary drugs; and the importance of formulary compliance to improving quality of care and restraining health care costs PBM provides consumer education that explains how formulary decisions are made and the roles and responsibilities of the consumer
PTFD5 PTFD6 PTFD7	P&T Committee Membership Defined	Needs of the consumers are represented by the appropriate clinical specialties and specialists who are practicing physicians or practicing pharmacists

Respondents are required to request the top twenty five (25) prescription medications consumed by Plan following release of RFP. The Proposed Vendor shall complete the chart below by quoting its price for each medication listed.

MISCELLANEOUS CHARGES

Specify the annual fee or charges to serve as the Account Manager to include the costs of an actuarial attestation on an as needed basis. (If the actuarial attestation is subcontracted, differentiate the charges between account management and actuarial assessment.)

If there are additional charges for issuing specialized reports (other than those outlined anywhere in this RFP), please specify the per hour costs to prepare such report.

CRITERIA EVALUATION

Evaluation criteria are stated on the following pages. The County references criteria from **URAC**, the Utilization Review Accreditation Commission. The County is requesting but not mandating that respondents are accredited through URAC. URAC's PBM Accreditation standards cover the PBM's contract terms and pricing structures; ensures access to drugs and pharmacies; provides for drug utilization management, formulary management, patient safety and customer service; and creates a process for PBM outcomes measurement and quality improvement.

Proposals shall be evaluated based upon pricing arrangements between the County and PBM, Formulary Management, Drug Utilization Review, Rebate Negotiations, Pharmacy Network Discounts, URAC accreditation (if accredited), the use of Mail Service Pharmacies, and Disease Management Programs.

PROGRAM GOALS

We require a competitive program that will provide a wide range of benefits and ease to add medications along with controlling costs. The PBM will manage the County's (Sponsor) program. The County has the ability to pay biweekly and requires pass through of rebates in the form of check if submitted as a component of the PBM program. The Respondents shall provide details of their rebate program.

The county reserves the right to request additional information and interview respondents. The County will require three verifiable references.

The county will monitor the performance of the awarded PBM on an ongoing basis to ensure that our goals and terms of the contract are met.

ATTACHMENT SEVEN
Sample Business Associate Agreement Provisions

This Business Associate Agreement (the "Agreement"), is made as of the ____ day of _____, 2014 (the "Effective Date"), by and between Business Associate and Covered Entity (County of Mercer) to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 ("the Privacy Rule") and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, subpart C ("the Security Rule"), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated there under and any applicable state confidentiality laws.

RECITALS

WHEREAS, Business Associate provides a response and quote to the requested RFP to or on behalf of Covered Entity;

WHEREAS, in connection with these services, Covered Entity discloses to Business Associate certain protected health information that is subject to protection under the HIPAA Rules; and

WHEREAS, the HIPAA Rules require that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of Covered Entity.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- A. Definitions. Terms used herein, but not otherwise defined, shall have meaning ascribed by the Privacy Rule and the Security Rule.
1. Breach. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.
 2. Business Associate. "Business Associate" shall mean **[insert name of Business Associate]**.
 3. Covered Entity. "Covered Entity" shall mean **County of Mercer**
 4. Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for a Covered Entity that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.
 5. HIPAA Rules. The Privacy Rule and the Security Rule and amendments codified and promulgated by the HITECH Act are referred to collectively herein as "HIPAA Rules."

6. Individual. "Individual" shall mean the person who is the subject of the protected health information.
7. Protected Health Information ("PHI"). "Protected Health Information" or PHI shall mean individually identifiable health information that is transmitted or maintained in any form or medium.
8. Required by Law. "Required by Law" shall mean a mandate contained in law that compels a use or disclosure of PHI.
9. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her Designee.
10. Sensitive Personal Information. "Sensitive Personal Information" shall mean an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: a) social security number; driver's license number or government-issued identification number; or account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or b) information that identifies an individual and relates to: the physical or mental health or condition of the individual; the provision of health care to the individual; or payment for the provision of health care to the individual.
11. Unsecured PHI. "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5 on the HHS Web site.

B. Purposes for which PHI May Be Disclosed to Business Associate. In connection with the services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may disclose PHI to Business Associate for the purposes **of** the services provided by Business Associate to Covered Entity, e.g., quotes, claims processing, audit, design of computer system, etc..

C. Obligations of Covered Entity. If deemed applicable by Covered Entity, Covered Entity shall:

1. provide Business Associate a copy of its Notice of Privacy Practices ("Notice") produced by Covered Entity in accordance with 45 C.F.R. 164.520 as well as any changes to such Notice;
2. provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate's permitted or required uses and/or disclosures;
3. notify Business Associate of any restriction to the use and/or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI;
4. not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy rule if done by the Covered entity;
5. notify Business Associate of any amendment to PHI to which Covered Entity has agreed that affects a Designated Record Set maintained by Business Associate;

6. if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual's right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI; and,

D. Obligations of Business Associate. Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the HIPAA Rules applicable to business associates, including:

1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI except as necessary to provide Services described above to or on behalf of Covered Entity, and shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by Covered Entity. Also, knowing that there are certain restrictions on disclosure of PHI. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate shall in such cases:
 - (a) provide information and training to members of its workforce using or disclosing PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement;
 - (b) obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (a) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached; and
 - (c) agree to notify the designated Privacy Officer of Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules. The Business Associate will also notify individuals of a breach. It will secure the Privacy Officer's approval and provide the form of the notice, evaluation of harm and will be responsible for the cost of the notification.
2. Data Aggregation. In the event that Business Associate works for more than one Covered Entity, Business Associate is permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Rules.
3. De-identified Information. Business Associate may use and disclose de-identified health information if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules. Moreover, Business Associate shall review and comply with the requirements defined under Section E. of this Agreement.
4. Safeguards.
 - (a) Business Associate shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as Required by Law. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the

confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.

- (b) Business Associate shall assure that all PHI be secured when accessed by Business Associate's employees, agents or subcontractor. Any access to PHI by Business Associate's employees, agents or subcontractors shall be limited to legitimate business needs while working with PHI. Any personnel changes by Business Associate, eliminating the legitimate business needs for employees, agents or contractors access to PHI – either by revision of duties or termination – shall be immediately reported to Covered Entity. Such reporting shall be made no later than the third business day after the personnel change becomes effective.
- 5. Minimum Necessary. Business Associate shall ensure that all uses and disclosures of PHI are subject to the principle of “minimum necessary use and disclosure,” i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and, the use of limited data sets when possible.
- 6. Disclosure to Agents and Subcontractors. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to Business Associate under this Agreement. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the agent or subcontractor in providing the services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.
- 7. Individual Rights Regarding Designated Record Sets. If Business Associate maintains a Designated Record Set on behalf of Covered Entity Business Associate agrees as follows:
 - (a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524. If the PHI is in electronic format, the Individual shall have a right to obtain a copy of such information in electronic format and, if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the individual in accordance with HITECH section 13405 (c). Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If Covered Entity maintains the requested records, Covered Entity, rather than Business

Associate shall permit access according to its policies and procedures implementing the Privacy Rule.

- (b) Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. 164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. § 164.526.
 - (c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI, whether PHI is paper or electronic format, in accordance with 45 C.F.R. § 164.528 and HITECH Sub Title D Title VI Section 13405 (c), and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. Business Associate agrees to use its best efforts to assist Covered Entity in meeting this deadline but not later than 45 days following receipt of the request. Such accounting must be provided without cost to the individual or Covered Entity if it is the first accounting requested by an individual within any 12 month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the individual in advance of the fee and is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including disclosures prior to the compliance date of the Privacy Rule) and shall be provided for as long as Business Associate maintains the PHI.
8. Internal Practices, Policies and Procedures. Except as otherwise specified herein, Business Associate shall make available its internal practices, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of Covered Entity to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity or the Secretary.
9. Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.
10. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's

PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.

11. Knowledge of HIPAA Rules. Business Associate agrees to review and understand the HIPAA Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA Rule, as well as any applicable amendments.
12. Information Breach Notification for PHI. Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary and the Individual in case of a security breach of unsecured PHI. Where Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses or discloses unsecured paper or electronic PHI, Business Associate immediately following the discovery of a breach of such information, shall notify Covered Entity of such breach. Initial notification of the breach does not need to be in compliance with Sub Title D Title IV Section 13402 of the HITECH Act; however, Business Associate must provide Covered Entity with all information necessary for Covered Entity to comply with Sub Title D Title IV Section 13402 of the HITECH Act without reasonable delay, and in no case later than 30 days following the discovery of the breach. Business Associate shall be liable for the costs associated with such breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.
13. Breach Notification to Individuals. Business Associate's duty to notify Covered Entity of any breach does not permit Business Associate to notify those individuals whose PHI has been breached by Business Associate without the express written permission of Covered Entity to do so. Any and all notification to those individuals whose PHI has been breached shall be made under the direction, review and control of Covered Entity. The Business Associate will notify the Privacy Officer via telephone with follow-up in writing to include; name of individuals whose PHI was breached, information breached, date of breach, form of breach, etc. The cost of the notification will be paid by the Business Associate.
14. Information Breach Notification for Other Sensitive Personal Information. In addition to the reporting under Section D.11, Business Associate shall notify Covered Entity of any breach of computerized sensitive personal information to assure Covered Entity's compliance with the notification requirements of Title 11, Subtitle B, Chapter 521, Subchapter A, Section 521.053, Texas Business & Commerce Code. Accordingly, Business Associate shall be liable for all costs associated with any breach caused by Business Associate's negligent or willful acts or omissions, or those negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.

E. Permitted Uses and Disclosures by Business Associates. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Business Associates Agreement or in a Master Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Also, Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with the HIPAA Rules.

1. Use. Business Associate will not, and will ensure that its directors, officers, employees, contractors and other agents do not, use PHI other than as permitted or required by Business Associate to perform the Services or as required by law, but in no event in any

manner that would constitute a violation of the Privacy Standards or Security standards if used by Covered Entity.

2. Disclosure. Business Associate will not, and will ensure that its directors, officers, employees, contractors, and other agents do not, disclose PHI other than as permitted pursuant to this arrangement or as required by law, but in no event disclose PHI in any manner that would constitute a violation of the Privacy Standards or Security Standards if disclosed by Covered Entity.
3. Business Associate acknowledges and agrees that Covered Entity owns all right, title, and interest in and to all PHI, and that such right, title, and interest will be vested in Covered Entity. Neither Business Associate nor any of its employees, agents, consultants or assigns will have any rights in any of the PHI, except as expressly set forth above. Business Associate represents, warrants, and covenants that it will not compile and/or distribute analyses to third parties using any PHI without Covered Entity's express written consent.

F. Application of Security and Privacy Provisions to Business Associate.

1. Security Measures. Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Federal Regulations dealing with the administrative, physical and technical safeguards as well as policies, procedures and documentation requirements that apply to Covered Entity shall in the same manner apply to Business Associate. Any additional security requirements contained in Sub Title D of Title IV of the HITECH Act that apply to Covered Entity shall also apply to Business Associate. Pursuant to the foregoing requirements in this section, the Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, has access to, or transmits. Business Associate will also ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect such information. Business Associate will ensure that PHI contained in portable devices or removable media is encrypted.
2. Annual Guidance. For the first year beginning after the date of the enactment of the HITECH Act and annually thereafter, the secretary shall annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in subsection (a) and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations. Business Associate shall, at their own cost and effort, monitor the issuance of such guidance and comply accordingly.
3. Privacy Provisions. The enhanced HIPAA privacy requirements including but not necessarily limited to accounting for certain PHI disclosures for treatment, restrictions on the sale of PHI, restrictions on marketing and fundraising communications, payment and health care operations contained Subtitle D of the HITECH Act that apply to the Covered entity shall equally apply to the Business Associate.
4. Application of Civil and Criminal Penalties. If Business Associate violates any security or privacy provision specified in subparagraphs (1) and (2) above, sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-5) shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such provisions.

G. Term and Termination.

1. Term. This Agreement shall be effective as of the Effective Date and shall be terminated when all PHI provided to Business Associate by Covered Entity, or created or received by

Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

2. Termination for Cause. Upon Covered entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - a. Provide an opportunity for Business associate to cure the breach or end the violation and terminate this Agreement, whether it is in the form of a stand alone agreement or an addendum to a Master Services Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
 - b. Immediately terminate this Agreement whether it is in the form of a stand alone agreement or an addendum to a Master Services Agreement if Business associate has breached a material term of this Agreement and cure is not possible.
3. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI.

H. Miscellaneous.

1. Indemnification. To the extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate or its agents in connection with the performance of Business Associate's or its agents' duties under this Agreement. This indemnity shall apply even if Covered Entity is alleged to be solely or jointly negligent or otherwise solely or jointly at fault; provided, however, that a trier of fact finds Covered Entity not to be solely or jointly negligent or otherwise solely or jointly at fault. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

Covered Entity shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of Business Associate. Covered Entity shall provide Business Associate with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist Business Associate in establishing a defense to such action.

These indemnities shall survive termination of this Agreement, and Covered Entity reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

2. Mitigation. If Business Associate violates this Agreement or either of the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.

3. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
4. Survival. The respective rights and obligations of Business Associate under Section E.3 of this Agreement shall survive the termination of this Agreement.
5. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity:

Attn: _____
Phone Number: _____

If to Business Associate:

Attn: _____
Phone Number: _____

6. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow Covered Entity's to comply with the requirements of the HIPAA Rules.
7. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.
8. Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.
9. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this

Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

10. Equitable Relief. Any disclosure of misappropriation of PHI by Business Associate in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further disclosure or breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.
11. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
12. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
13. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.
14. Entire Agreement. This Agreement, together with all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits, Riders, or amendments, the provisions of this Agreement shall control.
15. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.
16. Regulatory References. A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

Agreed to:

BUSINESS ASSOCIATE

By: _____
(Authorized Signature)

Name: _____
(Type or Print)

Title: _____

Date: _____

ATTEST:

COUNTY OF MERCER

BY: _____
Jerlene H. Worthy, Clerk
Board of Chosen Freeholders

BY: _____
Brian M. Hughes
County Executive

WITNESS:

BY: _____

APPROVED AS TO FORM AND EXECUTION

COUNTY COUNSEL